

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

WILBERT JOHNSON,

Defendant and Appellant.

B190223

(Los Angeles County
Super. Ct. No. TA079558)

APPEAL from a judgment of the Superior Court of Los Angeles County. John T. Doyle, Judge. Affirmed.

Ann Krausz, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Paul M. Roadarmel, Jr. and April S. Rylaarsdam, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Wilbert Johnson (defendant) appeals his conviction, following a plea of nolo contendere, to one count of possession of cocaine base for purposes of sale (Health & Saf. Code, § 11351.5.) Defendant contends the trial court erred by not suppressing evidence obtained during a warrantless search of his home and that defendant's purported consent to the search was obtained under duress.

We affirm the conviction. The trial court did not err by denying the motion to suppress.

BACKGROUND

On May 30, 2005, at approximately 2:30 p.m., Sean Malachi was assigned to the Los Angeles Police Department's air support division as a tactical flight officer. Officer Malachi was a passenger in a helicopter unit and was monitoring radio communications at that time. Officer Malachi and his partner, who was flying the helicopter, received a radio call reporting gunfire between two armed African-American men in front of a house on 146 West 95th Street in Los Angeles. Within a minute or two after receiving the radio call, Officer Malachi and his partner arrived at that address. From his vantage point approximately 500 to 900 feet in the air above the house, Officer Malachi observed an African-American man wearing a light-colored shirt and dark pants walking away from the front door of the house to the public sidewalk in front of the house. The man appeared to be holding something in his right hand near the area of his waistband; however, Officer Malachi was unable to see whether the man had anything in his hand. The man looked up at the helicopter unit several times, walked to the curb of the public street, looked up and down the street, and then returned to the front of the house. After a few seconds, the man walked back to the street curb and looked up and down the street a second time. The second time the man looked up and down the street Officer Malachi observed a police car proceeding eastbound on the street toward the man's location. After looking down the street in the direction of the approaching patrol car, the man walked quickly toward the front door of the house and went inside. Officer Malachi communicated his observations by radio to officers in patrol cars who were en route to the location.

Los Angeles Police Officer Jose Diaz-Ibarra and his partner responded to a radio dispatch call reporting that two African-American men were fighting with guns at 146 West 95th Street and that gunshots had been fired. As the officers drove to that location in a marked police car, Officer Diaz-Ibarra heard Officer Malachi's radio report that an African-American man wearing a white shirt and blue jeans had exited the house, while holding onto his waistband. The man looked in the direction of Officer Diaz-Ibarra's approaching patrol car and ran back into the house. As Officer Diaz-Ibarra approached the house, he activated the lights and siren on his patrol car, and he believed the siren could be heard within a one-block radius.

In addition to Officer Diaz-Ibarra and his partner, officers in three additional patrol cars arrived at the location at approximately the same time. The officers convened in front of the office and discussed a plan for entering the house to determine whether any victims were inside. While they were doing so, defendant partly opened the front door of the house and put his head through the doorway to peer outside. An officer ordered defendant to exit the house, and defendant did so. He approached the officers and said, "I called you. I just got jacked," street vernacular for having been robbed. Defendant was wearing a white shirt and blue jeans, which matched the description provided by Officer Malachi. Defendant was handcuffed and placed in the back of a patrol car.

Defendant told Officer Diaz-Ibarra that no one else was inside the house. Although Officer Diaz-Ibarra did not hear gunshots or any other noise coming from within the house, because the radio dispatch call had described two men fighting with guns, he entered the house to ensure that there were no victims inside who needed immediate assistance, or no additional suspects with guns. Officer Diaz-Ibarra entered through the front door and went inside the living room. He smelled a strong odor of marijuana and observed glass beakers with white residue resembling cocaine on the kitchen counters. He did not touch or move these items. Because the scope of his search was limited to suspects and victims, Officer Diaz-Ibarra only opened closed doors to ensure that there were no other people in the house. He did not open drawers or containers in any of the rooms. When he was satisfied that there were no victims or

suspects in the house, Officer Diaz-Ibarra exited the house and heard another officer advising defendant of his *Miranda*¹ rights. He was present while another officer showed defendant a consent-to-search form and read the contents of that form to defendant. Officer Diaz-Ibarra observed defendant signing the consent to search form.

After obtaining defendant's consent to search, Officer Diaz-Ibarra reentered the house to search for contraband, including narcotics and guns. He recovered glass beakers with a white residue, rock cocaine and powdered cocaine, a loaded handgun, and \$1,300 in cash.

DISCUSSION

A. Standard of Review

"In reviewing the trial court's denial of a motion to suppress evidence, we view the record in the light most favorable to the trial court's ruling, deferring to those express or implied findings of fact supported by substantial evidence. [Citations.] We independently review the trial court's application of the law to the facts. [Citation.]" (*People v. Jenkins* (2000) 22 Cal.4th 900, 969.)

B. Warrantless Entry Into Residence

"The Fourth Amendment protects '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.'" (*Devenpeck v. Alford* (2004) 543 U.S. 146, 152.) "It is axiomatic that 'the physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.' [Citation.]" (*Welsh v. Wisconsin* (1984) 466 U.S. 740, 748.) Warrantless entry into a home is "presumptively unreasonable." (*Payton v. New York* (1980) 445 U.S. 573, 587.) This presumption can be overcome, however, "by a showing of one of the few 'specifically established and well-delineated exceptions' to the warrant requirement [citation]" (*People v. Celis* (2004) 33 Cal.4th 667, 676.)

Exigent circumstances is one of the exceptions to the requirement that a warrant be obtained before searching a residence. (*People v. Celis, supra*, 33 Cal.4th at p. 676.)

¹ *Miranda v. Arizona* (1966) 384 U.S. 436.

Warrantless entry into a home based on exigent circumstances requires probable cause to believe that entry is justified by one of the following factors: pursuit of a fleeing felon, the need to prevent a suspect's escape, imminent destruction of evidence, or the risk of danger to police or to other persons inside or outside the dwelling. (*Minnesota v. Olson* (1990) 495 U.S. 91, 100; *Celis*, at p. 676.) “Where there is reasonable cause to believe additional suspects or potential victims are in a residence, a warrantless entry is permissible. [Citations.]’ [Citation.]” (*Tamborino v. Superior Court* (1986) 41 Cal.3d 919, 924 (*Tamborino*)). Determining whether exigent circumstances exist involves a two-step inquiry – first, a factual inquiry concerning the officer's knowledge or belief and the actions taken in response; and second, a legal determination as to whether that action was reasonable under the circumstances. (*People v. Duncan* (1986) 42 Cal.3d 91, 97.)

Defendant does not challenge the trial court's factual determinations that the officers subjectively believed that an injured person or a gunman might have been inside defendant's house, or that the officers limited the scope of their initial search to locate such persons. Substantial evidence supports these factual findings, in any event. (See *Tamborino*, *supra*, 41 Cal.3d at p. 925.) Defendant contends that the officers' warrantless entry into the house was objectively unreasonable under the circumstances because there was no probable cause to believe that suspects or victims might be present. We disagree.

The police officers detained defendant after he exited a house identified in a radio dispatch call as the location where gunfire had been exchanged between two armed African-American men. Although defendant told police officers that no one else was inside the house, the officers had a reasonable basis for disbelieving that statement. Defendant matched the description provided by Officer Malachi, who had observed a similarly dressed African-American man exit the house a few minutes earlier and behave in a suspicious manner. The man, who was holding onto his waistband, looked up at the police helicopter, twice walked to the street curb to look up and down the street, and then quickly returned inside the house after looking in the direction of an approaching patrol car. Defendant did not exit the house immediately when police officers arrived at the

location, but had to be ordered out after the officers saw him peer through a partly open doorway. Defendant's head was the only part of his body initially visible to the officers; the rest of his body was concealed by the partially closed door. Although defendant claimed that he had called the police because he had been "jacked," his conduct was inconsistent with this statement. He had not behaved like someone who was the victim of a crime awaiting the arrival of police officers. Given these circumstances, the officers could reasonably disbelieve defendant's statement that no one else was in the house. Defendant's statement to the contrary may even have heightened the officer's concern that a victim or suspect might be present.

Probable cause existed for the officers to believe that another suspect or a victim needing immediate assistance might be present, and exigent circumstances justified the officers' immediate entry into the house without a warrant.² (*Tamborino, supra*, 41 Cal.3d at p. 924; *People v. Keener* (1983) 148 Cal.App.3d 73, 77.) The radio dispatch call stated that gunshots had been exchanged between two gunmen, and the officers had detained only one potential suspect. Defendant argues that the officers were not entitled to rely on the radio dispatch call as the reason for their warrantless entry because that call was based on an anonymous tip that lacked sufficient corroboration or other indicia of reliability. Here, the officers had sufficient corroborating information. (*Florida v. J.L.* (2000) 529 U.S. 266, 270; *Alabama v. White* (1990) 496 U.S. 325, 327 [police may rely on anonymous tip to detain suspect if there is sufficient corroborative information].) The call identified a specific address at which two men were fighting with guns. Officer Malachi observed defendant exiting the house at the address while holding onto his waistband and behaving in a suspicious manner. After he was ordered outside the house, defendant himself acknowledged the commission of a crime, saying he had been robbed.

² Because we hold the officers' warrantless entry in this case was based on exigent circumstances, we need not determine whether that entry was also justified based on the community caretaking exception, the emergency aid doctrine (a subcategory of the community caretaking exception), (see *People v. Ray* (1999) 21 Cal.4th 464, 471-478), or as a "protective sweep" to ensure the safety of the responding officers. (*Maryland v. Buie* (1990) 494 U.S. 325, 327; *People v. Ormonde* (2006) 143 Cal.App.4th 282.)

Defendant's conduct, however, was not consistent with that of a robbery victim awaiting the arrival of police officers. Given defendant's inconsistent and suspicious behavior, the officers could reasonably believe that another suspect might be inside the house or that a victim needing assistance might be present.

Defendant argues that the circumstances of this case are factually distinguishable from other cases in which courts have found probable cause to enter a home for the purpose of locating potential victims. (See *Tamborino*, *supra*, 41 Cal.3d 919 [officers could see blood stains outside the apartment, heard strange noises coming from within, and saw defendant covered in blood]; *People v. Hill* (1974) 12 Cal.3d 731, overruled on another ground by *People v. Devaughn* (1977) 18 Cal.3d 889, 897 [officers knew of one victim of gunshot wound and saw blood stains on fence and porch of house]; *People v. Roberts* (1956) 47 Cal.2d 374 [officers heard noises coming from inside apartment and reasonably believed someone was hurt].) These factual differences, however, do not preclude a finding that the officers here had probable cause to search the house for suspects or victims. As our Supreme Court has noted, "There is no ready litmus test for determining whether such circumstances exist, and in each case the claim of an extraordinary situation must be measured by the facts known to the officers." (*People v. Ramey* (1976) 16 Cal.3d 263, 276.) Although the officers in this case heard no sounds coming from within the house, the absence of noise from a suspect hiding within the house would not be unusual in light of the visible and substantial police presence at the location. Similarly, it would not be unreasonable to assume that the victim of a gunshot wound might be unconscious or otherwise unable to alert the officers to the victim's presence. The officers here had probable cause to believe that a suspect or victim might be present in the house, and their warrantless entry was reasonable under the circumstances.

The officers' initial search of the premises was also reasonable. Their initial entry into the house was for the limited purpose of locating potential suspects or victims, and their actions were consistent with that purpose. They confined their search to opening doors and closets where such persons might be concealed.

C. Consent to Search

Defendant contends his motion to suppress the evidence obtained during the officers' second search of the house should have been granted because his consent to search was obtained under duress and coercion. A police officer may enter a residence without a warrant if consent to search is voluntarily given. (*Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 222.) The prosecution bears the burden of establishing that consent to a search was voluntary and unaffected by duress or coercion. (*Bumper v. North Carolina* (1968) 391 U.S. 543, 548-549; *People v. James* (1977) 19 Cal.3d 99, 106.) "The voluntariness of the consent is in every case 'a question of fact to be determined in the light of all the circumstances.' [Citations.]" (*James*, at p.106; *Schneckloth*, at p. 227.) The trial court's findings on this issue must be upheld on appeal if supported by substantial evidence, viewing the evidence in the light most favorable to the prosecution, and deferring to the trial court's power to judge the credibility of witnesses, resolve conflicts, weigh evidence, and draw factual inferences. (*James*, at p. 107; *People v. Hernandez* (1988) 199 Cal.App.3d 1182, 1187.)

Substantial evidence supports the finding that defendant voluntarily consented to the search. Officer Diaz-Ibarra was present when another police officer showed defendant a consent-to-search form and read the form to him. Officer Diaz-Ibarra had already completed an initial search of the house for victims and potential suspects. Defendant, who was still being detained, was in handcuffs and was standing outside the house. After the form was read to him, defendant's handcuffs were removed, and he signed the consent-to-search form in Officer Diaz-Ibarra's presence.

Defendant argues that the number of officers present at the location, and the fact that he was detained and handcuffed before he signed the consent form, is evidence that his consent was not voluntarily given. The fact that defendant was detained and handcuffed at the time he consented is not determinative. (*People v. Ratliff* (1986) 41 Cal.3d 675, 686-687; *People v. Miller* (1999) 69 Cal.App.4th 190, 203.) These factors, while relevant, do not persuade us to override the trial court's finding that defendant voluntarily consented to the search.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
DOI TODD

_____, J.
ASHMANN-GERST